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AS/Cult (1999) 31
12 June 1999

COMMITTEE ON CULTURE AND EDUCATION

LOOTED JEWISH CULTURAL PROPERTY

Proceedings of the hearing
Paris, 19 April 1999

The Chairman (Mr Nothomb) – I welcome participants to the hearing and give the floor in the first place to the rapporteur of our Committee on Culture and Education, Mr Zingeris. Our time is limited to two hours, so I must ask Committee members to leave statements for later discussion in Committee and the Assembly debate.

Mr Zingeris – Chairman, fellow colleagues, parliamentarians, contributors to the parliamentary hearing, ladies and gentlemen, the subject of this hearing is dedicated to the values of the Council of Europe on the eve of the 50th anniversary as well as to the coming 50th anniversary of the European Declaration on Human Rights.

The Holocaust is the most terrible example of the violation of human rights. One side of the Holocaust was a crime against human life. The other side of the Holocaust is the crime against a 1 000 year old European Jewish culture which had already been a flourishing cross-cultural community in ancient Roman times, rather like the Maastricht community of today. The special brutality of the Nazis was that they wanted to create a reserve of an artificially, pure culture in Europe. Unfortunately this idea is still alive in Europe and we see its sequel now in ethnic cleansing in Kosovo. The Nazis dismembered collections of Jewish culture heritage seeking to destroy all the modern European art, the work of young artists from Linz,, Warsaw, Vilnius or Prague. These works were deliberately sold. In Eastern Europe there were tens of Jewish academic centres in which the Jewish cultural heritage - not only private collections - had been systematically stored. This academic network was destroyed, first by the Nazis and afterwards what remained was destroyed by the Soviets. Such artificially executed damage can only be repaired by our common efforts based on our clear conviction that crimes of genocide have no statute of limitations, whether this concerns the murder of a people or of their cultural identity.

Understanding the importance of restoring the value of the Jewish contribution to European culture, the Council of Europe Parliamentary Assembly adopted a report by Mr Martínez on Jewish Sephardic culture in 1988 and by myself on Yiddish culture in 1996. This covered the 2000-year long cultural activities of European Jewry up to the Holocaust and in the post-Holocaust period. Today we are realising point 9 (i) of Recommendation No. 1291 of the Assembly on Yiddish culture which relates to the process of reinstating Jewish cultural heritage looted during World War II and under communist regimes.

The London and Washington Conferences played an important role in bringing this issue to the world's attention. We Europeans must express our gratitude to our American friends, first and foremost to SM Eizenstad, Under-Secretary of State, and Mr Bindenagel, who is here with us. Our task is to build on the Washington initiative as structure of the lost Jewish culture must be restored not only in the name of the past but for the sake of new generations of Europeans who must have knowledge of this authentic European culture.

As a representative of the Assembly Committee on Culture and Education I ask you, our contributors, to provide us today with information about looted Jewish cultural heritage. This is a way to help the Parliamentary Assembly to introduce new legislation in the 43 parliaments of the member states of the Council of Europe and to propose further actions to the Committee of Ministers and to the executive level of the Council. All your contributions will be included in the explanatory memorandum of the coming report on this issue for the Assembly. I thank you all. Let us start our common work in the name of those six million Europeans who do not exist anymore.

The Chairman – Thank you Mr Zingeris. I now give the floor to Mr Bindenagel. He has 25 minutes. I know he has a lot to say

Mr Bindenagel – Thank you Mr Chairman. I thank the Committee on Culture and Education of the Parliamentary Assembly of the Council of Europe. In particular I am very pleased to participate in this hearing. I am delighted to have the chance to report to you on some of the outcomes of the Washington Conference on Holocaust Era Assets.

While the Washington Conference focused on Nazi-confiscated art, unpaid insurance claims and communal property restitution, underlying our effort was a sense that we all needed to pursue justice from the Nazi period. Aging Holocaust-era survivors gave urgency to our understanding that justice delayed is justice denied. Those who gathered in Washington last December agreed that money should not be the last word in this millennium on the Holocaust.

Consequently, at that conference, 44 nations adopted by consensus the Washington Conference Principles on Art that address the sale, purchase, possession and exchange of Nazi-confiscated art. I can still hear the echo of the Director of the Metropolitan Museum of Art when he described one of the key results of the Washington Conference when he said "The art world will never be the same".

Before I turn to those principles let me first review very briefly what we mean by "Holocaust-era Assets" and how we developed the idea of an international conference on this subject.

During the Holocaust era among other atrocities, the Nazis systematically looted their victims, both people and nations. This was not the typical "rape and pillage" which comes from the train of most triumphal armies. This was a systematic, carefully managed and fully researched theft, especially when it involved art.

At the war's end the Allies set up a comprehensive system to identify, catalogue and return what had been stolen. The Monuments, Fine Arts and Archives units of the US forces were our agents in this major post-war effort. The Allies sent tangible efforts such as art back to their countries of origin where national governments were expected to return these assets to their owners or their heirs. The system worked well, except in Eastern Europe where Soviet-installed communist governments ruled and made it difficult to return art.

Art, however, was indeed returned. For example, tens of thousands of works of art were returned to France from collection points in Germany. Owners or heirs could not be identified for only 15,000 art works and of that number only 2,000 were considered extremely important and were placed in French museums in trust. As I said, the magnitude of the Nazi theft was huge. This restitution process in the post-war period continued for just a few years, resulting in the return of most artwork which had been stolen and recovered by the allied military forces. But the return process then stopped with significant work unfinished.

By 1950 the West was no longer focused on World War II. The Second World War had been replaced by the Cold War, which became our first priority. Except for a few Jewish agencies the restitution of the remaining assets stolen by the Nazis would have to wait for the fall of the Berlin Wall in 1989 and the collapse of the Soviet Union in 1991. When those historic events happened and mindful that Holocaust survivors were rapidly aging, there was renewed interest in finding a measure of justice so long denied by completing the unfinished work of 50 years ago. We felt an added urgency to do so before the new millennium begins.

In 1995 the United States President Clinton asked Mr Eizenstat, Under-Secretary of State today, when he was at that time US Ambassador to the European Union, to engage the US Government in a renewed effort to assist Holocaust victims and to seek redress for Nazi injustices. He has continued this work today, including the Washington Conference on Holocaust-era Assets which he convened with Mr Lerman of the US Holocaust Memorial Council.

In the early stages of planning for the conference, we realised that success depended on forging an international consensus. We had no leverage to compel nations to deal with histories of their own countries other than appeals for justice and, more practically, some common sense. Negotiating an international agreement was not in the realm of our thinking at that time. On the other hand we needed to ensure that even if the Washington Conference would have "non-binding" results, it would nonetheless be very tangible and the positive change in the way that nations dealt with Holocaust-era Assets would be ensured. We engaged several European art museum directors in this effort. In effect we showed them what the American Association of Art Museum Directors had done in establishing guidelines for the members of their own association. We drafted a set of general guidelines to help in the discussion for the conference. We kept up a dialogue with the American art museum directors, ensuring that its leadership was kept up to date on what the Europeans were doing and thinking, as well as on our own thinking on the art principles that became the Washington Conference principles on Nazi-confiscated Art.

Throughout this process we were mindful of the serious issues facing museum directors in expanding guidelines along the lines that we were proposing: issues such as how international exchanges would be affected and the process of doing renewed research on art provenance were very much in our minds and were among the reasons for our close contacts with museum directors , art galleries' and auction houses.

In the end, and as a result of last-minute high-level negotiations and discussions with the French, Russian, German, Swiss and other governments, we fashioned these eleven principles on art and won consensus from the 44 governments attending the conference to support them. While this support is "non-binding", the Washington Conference Principles carry with them powerful incentives for nations to comply. We see here today a growing interest among the nations of the Council of Europe to join this process. We welcome that. I look very much forward to hearing from some of the other speakers today on what has transpired in their countries.

Let me return to the principles themselves and give you some sense of what it is that we negotiated and what we were trying to achieve.

If you look at the first three principles, we envisage a massive co-operative effort to trace art. The international consensus calls upon museums to search the provenance of their holdings, on governments to open up their World War II archives and related holdings to private researchers, for commercial galleries and auction houses to seek information, to document and make available what information they have. It is important to locate what was confiscated. It is equally important to know what was not confiscated or what was restituted to pre-war rightful owners. The taint of "stolen art" should not be applied to works that do not deserve it.

As we turn to principle 4, it deals with gaps and ambiguities in the provenance of artworks. The vast displacement of art, the destruction of many records, the furtive nature of the international market during the War meant that there must be some leeway in establishing

provenance. Where there is no bill of sale, a diary entry or an insurance listing might be acceptable evidence of pre-war ownership. If a work is not on a Nazi confiscation list, it may well be in the archives of the Monuments, Fine Arts and Archives of the United States or in secret inventories of the French Resistance or in other archival collections. Conversely there may be circumstantial evidence that the works were not stolen but sold in the market, restituted to families and subsequently sold.

Principles 5, 6 and 7 pertain to the publication of information related to artworks in question as well as to the resolution of claims. They discuss circulating photos of the art and information about it everywhere in the world, through traditional media and on the Internet. Maximum publicity will tell survivors and their families if their art still exists. It will also tell the international art community if questions exist about given works of art.

The eighth principle calls upon involved parties to be flexible and to be just in the resolution of claims. Art claims do not have to be winner-take-all propositions, which produce prolonged struggles in the courts and drain the resources of both parties. In an atmosphere of goodwill, a wide range of solutions can be found.

If the original owners are found to have died without heirs, in the principles (9) we suggest that other just and fair solutions must be sought. For example, the art may be sold with proceeds benefiting victims of the Holocaust and Jewish communities around the world. The art could also be displayed in museums and identified in ways that educate the public about the cultural losses sustained by individuals during the Holocaust era. We have recently proposed the return of artworks with a special bequest to a museum or monetary compensation or special exhibit to grant recognition to the rightful owner by explaining the artist's or owner's background in the public exhibit.

The tenth principle states that to ensure objectivity and to enhance public confidence in their work, national commissions in this field should have members from outside governments, such as art experts, historians and representatives of communities that were victims of the Holocaust, and, where appropriate, distinguished persons from other countries.

Finally, the eleventh principle, the subject of your meeting today, speaks of the need to give other principles vitality. It calls upon nations to take specific measures to apply these principles so they can more quickly accomplish our mutual goals. Nations and organisations should strive to develop internal processes which allow for the timely restitution of this looted property.

Finally let me share with you the status of a couple of current cases that point out the promise of the Art Principles as well as how complex the issue really is.

We are working with the Russian Government, for instance, on co-operation in the return of Nazi-confiscated art and in opening up Russian archives to research. This was one of the major breakthroughs of the Washington Conference. Under Dumas law, art taken by the Soviet Army at the war's end is considered "war reparation". However, the Russian Government has expressed a willingness to consider claims for Nazi-confiscated art if it can be established that the Nazis confiscated it from individuals who were victims of Nazi persecution first.

We are also reminded of how complex and difficult it is to work on these issues, even when we act with the best of motives. Many of you are familiar with the case of the so-called Lubomirski Dürer drawings. The Government of Ukraine has asked us to look into their

claim that after World War II the United States apparently turned the drawings over to an individual claimant, Prince Lubomirski rather than to the country of origin, as was our practice. Ukraine asks that the city of Lviv becomes or is the rightful owner in this discussion rather than the prince because the Lubomirski family had earlier donated the drawings to the city. Ukraine is asserting its ownership interest in the drawings and has approached the United States Government to question the return to the individual rather than to the nation. The State Department considers this question a very serious one and has referred the issue to the National Archives for research on the 1940s return and also to the newly appointed Presidential Advisory Commission on Holocaust Assets to review the decisions taken in the late 1940s. We have informed the Government of Ukraine as well as the National Gallery of Art, which holds one of these drawings.

The Washington Conference Principles have indeed, as Mr Montebello has observed, "changed the art world forever". With any significant change there is anxiety, but we believe that in serving simple justice for Holocaust victims and their heirs others have also benefited. With the threat of judicial seizure hanging over museum exchange programmes, the Washington Conference Principles are now part of the determination the State Department make in advising and the US Information Agency whether there is a "national interest" that applies to a request for immunity from judicial seizure, thus helping to preserve this vital cultural exchange programme.

The Principles are also helping to stabilise the international art market, driven by concerns over holdings of "tainted art". We understand that the celebrated settlement that we had noted at the Washington Conference of the Goodman family involving a Degas at the Art Institute in Chicago may not have been the best resolution; but this has demonstrated that with good will on all sides, creative solutions are possible. The principles place heavy emphasis on alternative dispute resolution mechanisms.

I hope that you share with us the conclusion that the Washington Conference Principles surpassed our greatest expectations as we reached consensus on a number of substantive issues. I believe we made historic progress in advancing the cause of justice, however belated, to the victims and the survivors of the Holocaust. Thank you very much.

The Chairman – Thank you very much, Mr Bindenagel. The American presentation will be concluded by a statement by Rabbi Baker, Director of European Affairs in the American Jewish Committee.

Mr Baker – Thank you very much for this opportunity to be with you. The American Jewish Committee was founded 93 years ago by a group of largely German Jewish immigrants who had settled in New York City. Over the intervening decades it has grown to be an organisation of some 70,000 American Jews. We maintain offices in 31 cities in the United States as well as offices in Jerusalem and now Berlin. The American Jewish community in large measure is reflected in our own membership. In this setting one should be reminded of the fact that the vast majority of American Jews are themselves the children or grandchildren of Europeans.

We have a commitment to upholding our end of this transatlantic bridge, to broaden and to deepen the current relations between Europe and America. We have a special appreciation for the Council of Europe. During years past we have worked closely and among other events were proud to be a sponsor with the Council at its symposium on Europe versus intolerance. I am pleased to be able to have this opportunity to speak with you on this subject today.

Nearly half a century ago, when the post-war German Government undertook to negotiate compensation and restitution agreements with the State of Israel and with Jewish Holocaust survivors they described the process as *wiedergutmachen*, literally, "making good again". Over the decades of these negotiations - and they are, in fact, still ongoing - the Jewish representatives always the use of this term. After such horrors no-one can literally make good again; no-one can restore what was lost or what was suffered. The enormity of the crime of the Holocaust itself, which has come to symbolise absolute evil in our generation, argues against using this term. But it can also be said that its meaning implies, certainly for the Germans who use it, the idea of "atonement", of an almost religious or biblical demand to make amends, not simply to pay compensation for something that was lost or stolen. In any case, however used or however qualified, the term has come to express a relationship that carries with it both moral and legal obligations. There is - or at least there should be - something similar in what is taking place now in many countries and in regional and international deliberations such as this. The crimes of the Holocaust took place across the continent and the beneficiaries of looted and stolen assets can be found across the globe.

The larger backdrop - and I speak now of the remaking of a greater and unified Europe that is identified by the Council of Europe - may even suggest its own complicated parallels to this. Whether or not we believe there is a responsibility to make amends for the crimes of the communist era, we are all engaged in trying to overcome, trying to "reverse" the damage that was inflicted over these past decades. Much of the democratic West - I speak here of both Europe and America - believes it is imperative to support the processes of economic and political revival of its eastern neighbours. We can already see in certain cities like Prague, or Budapest or even parts of Vilnius, a physical restoration that rivals pre-communist and pre-war glories.

But the buildings notwithstanding, the people are not the same. Many of those who populated these countries before the war and before the advent of communism have long since established new lives in the West. Some - Jews in particular - were exterminated or fled after the war when confronted with new waves of anti-Semitism and intolerance. They have claims to be made. How they are addressed will also be a reflection of how successful the governments of nations of Europe are in remaking themselves.

Basic justice would seem to demand that where looted valuables can be identified and owners or their heirs matched to them, those valuables should be returned or compensation paid instead. How this is done, by whom, with what guidelines or laws or outside pressures, will, no doubt, be the focus of much of this committee's work.

I would like to draw attention this morning to the questions that arise when we speak of heirless, unclaimed or unidentified assets; when we ponder what to do with Jewish cultural property - as distinct from the cultural property of Jews, such as Jewish ritual objects, Jewish books and Torah scrolls, and even how nations choose to respond to claims for the return of Jewish communal property.

Even when people are committed to "doing the right thing" - and this is still far from certain - there are problems and conflicting obligations. Let me make four points and then conclude.

The creation of a new Europe also includes the revival of Jewish communities. They need help and financial resources. They need the return of communal property in which to carry out their activities. After the devastation of the Holocaust and the numbing and

repressive years of communism? it is a miracle that they exist at all. In one decade they have already proved wrong many respected analysts. But they are still in most countries only a shadow or a faint remnant of what was. They are not, and never will be, the re-establishment of pre-war Jewish life. Their numbers are far too small for that. But they must be included in the restitution of assets and they are entitled to their own place at the table.

Secondly, we know that the largest numbers of those European Jews who survived the Holocaust found their way to Israel and America. They and their descendants also have a claim to make. They now live where there are the greatest concentrations of Jewish life; where Jewish books and Torah scrolls, for example, would be most assuredly used, and not only today but in future generations. The disposition of Jewish cultural properties - at least those that cannot be matched with individual claimants - must be linked with Jews who can still use them today and not restricted only to a geographical point of origin.

Thirdly, we will also speak of monetary assets or monetary compensation in lieu of the restitution of art and property. Holocaust survivors - both those in the West and those whose suffering continued under communism in Eastern Europe - have a claim to be made even if they may not be able to identify or show evidence of a direct loss or stolen asset. Many are in need; many face illness or chronic health problems. It is a sobering reflection on the current situation that even as we are channelling millions of dollars towards the social care of Holocaust survivors through organisations such as the Jewish Conference on Material Claims Against Germany, we are almost overwhelmed by the growing needs. Yet we should not be surprised that such conditions experienced years ago have medical and psychological consequences for survivors today.

Fourthly, it is axiomatic that not only Jews but Jewish life was destroyed by the Holocaust. As we look past the generation of aging survivors there are also valid claims to be made that we must support efforts to continue Jewish life in its most broad terms. Beyond the already articulated obligation of Holocaust memory and the collection of historical and archival documents, this would mean support for Jewish education, for Jewish youth activities, for Jewish cultural expressions, around the world and certainly here in Europe where there are established as well as new institutions with contributions to be made: organisations such as the European Council of Jewish Communities or the European Institute for Dispersed Minorities.

To conclude, restitution and compensation can and should support all these needs. It may be a problem of Solomonic proportions, but at least you could say that in this case the baby can be divided.

The Chairman – Thank you very much, Mr Baker. Now I give the floor to Mr O'Keefe, who is our legal consultant. After that I hope we shall have some time for questions.

Mr O'Keefe – Thank you Mr Chairman. Ladies and gentlemen, Mr Bindenagel has stressed the need for creative means of solving the problems arising out of the matters we are looking at today. I agree thoroughly with what he said. It is vitally necessary that when people come to look at the issues and disputes, a creative approach be taken. But before you can take a creative approach, you have to know where you are coming from and what the issues are that are likely to arise. For example, if you are a mediator, you cannot operate effectively as a mediator unless you know what the expectations and background are of the two parties you are dealing with. So it is necessary that there be knowledge of the legal situation underlying these claims.

I usually take the approach that it is best for people concerned that they know the difficulties beforehand. There is no purpose in telling people that there are no problems or waiting until the problems arise in practice and then saying: "Well, you cannot get it back because the law says you cannot". You need to know this. The people involved in such claims need to know it. The legal situation in the United States is very different to the legal situation in Europe so you cannot take the same attitude towards the legal system in the two different areas.

I want to mention today three particular legal issues that are likely to cause problems in Europe. One is the limitation period, the time in which a claim has to be brought for the return of a particular object. Second is the concept of inalienability; in other words, that a person who has responsibility for a particular object is not allowed by law to return it to a person who may have owned it at some period in the past. Third - and this is one which is not mentioned in my paper, but which I will bring out at this meeting - is the issue of export controls.

To give you an idea where the thinking has reached on these particular matters, it is useful to look, for example, at the statement of principles from the British Museums, which is contained in the list of documents which you have. Principle 5(4), for example, says that when the claim is made: "the institution will seek to resolve the matter in an equitable, appropriate and mutually agreeable manner, taking into account the possibility of competing third party claims as permitted by its governing legislation and in conjunction with the relevant department". As you can see, that statement is heavily qualified. The literature I have seen on this particular matter so far has only referred in very vague terms to the issue of limitations. The other matters, as far as I can see, have not been discussed at all.

Regarding limitation periods, very briefly, there is a constancy here in Europe, apart from the United Kingdom. Most of the civil law systems say that after a set period, if a person who purchased an object acquired it *bona fide* – in other words, in good faith – then that person becomes the owner. In Italy that takes place at the moment of sale, subject to certain qualifications of procedure and so forth. In France it is a period of three years. Once again there are qualifications, which I set out in more detail in my paper. In Switzerland it is five years. In most of these countries there is an overall period whereby, say, after thirty years, even if you knew of the theft you acquire a good title.

In England the situation is somewhat different in that there, if a thief sells it to me and I know of the theft, I cannot pass a good title. If I do not know of the theft and once again I take it in good faith, then six years after that event I have a good title. So a relatively short period.

What are the possibilities of changing this? The only instance in recent years where this matter has been discussed in detail was during the Unidroit negotiations in Rome for the Convention on Stolen and Illegally Exported Cultural Objects of 1995. The rule that was adopted there – the *prima facie* rule is that all stolen objects have to be returned. However, the limitation period runs from the time the claimant knew the location of a cultural object and the identity of its possessor. The period is three years after that. You have to make the claim within that period, or there is an overall period of fifty years. There is a special period of seventy-five years for objects taken for public collections.

You would see that under those rules, property taken from Jewish persons during the Nazi period would now be out of time. I should qualify this by saying that the Unidroit Convention has absolutely no relevance to anything which came out of the Nazi period. But I

am using it by analogy to show what states were thinking in 1995. The people who led the demand for shorter periods of limitation were the European states. States from other parts of the world wanted either a very long period or no period at all. But the European states demanded a short period of time. So that made it one of the things that it is necessary to consider. It may be that you can argue a special case for material from the Nazi period.

The second legal issue is that of inalienability. Once an object is taken into a museum collection, in some countries it becomes inalienable. This means it cannot be returned to the claimant even though they may wish to. It may be that you can only do this by legislation. This is a common situation in European museums and it is a position very similar to that adopted by trustees under, say, the British system, whereby museum directors, in many cases constricted by very strong rules as to what can be handed back to a claimant. Even though the object may have been stolen, if they have acquired a good title under the limitation periods then it cannot go back unless there is legislation. There is also the position of private owners. Is the government prepared to pass legislation which will require private owners to return material?

The question of export controls. As many of you will be aware European countries have a variety of controls on the export of cultural heritage material. For example, in Germany there is a limited list of such material, roughly 2,000 objects. In Spain there is a very extensive list, as in Italy. There is provision, for example, under the Italian legislation whereby the authorities can allow objects to be exported. But – and I do not have any figures on this – the usual reaction is that this power is very seldom exercised.

In the United Kingdom the situation is that you can export cultural heritage objects provided a stop order has not been put on their export by the government after investigation. But even that only lasts for a limited period, during which time the possibility of raising funds for public purchase can be put into operation.

So there are a variety of controls. Let us say you have a situation where an object has been given back to a claimant. What if the claimant is outside the country? Will the object be allowed to be exported to the claimant? What if the owner is within the state? There is probably no problem in that case, except that there are situations where there are export controls within the individual provinces, cantons, etc of the state. Finally, what is the situation where the owner wants to export the object but not to keep it in his or her possession, but in order to sell it? These are questions which, if you are going to create a special régime, will have to be considered by governments in deciding how to deal with property which has been returned to the person concerned, the Jewish person who lost it during the war to the Nazis, or the heirs of that person.

And finally the question of dispute settlement. Adjudication – in other words, court proceedings and arbitration – are not suitable proceedings in this area mainly because you have to deal with legal rules. In arbitration there are certain exceptions, particularly within the civil law system in Europe, but basically they have to decide according to legal rules. Unless the rules are changed, along the lines I have been indicating, then those systems are inappropriate. Mediation is, as was noted by the American Association of Museum Art Directors, probably the most appropriate method of resolving disputes and utilising the creative suggestions that Mr Bindenagel has suggested. There needs to be much greater knowledge of such processes of negotiation and mediation. There are people who are expert in the various fields. Not everybody is a good mediator, it is an art that can be learnt, provided that you have the basic skills to become involved. It is a sort of process where you have to

know at the beginning what the parties' positions are in relation to a particular problem. Otherwise it would be very difficult to reach a satisfactory conclusion.

With that I would like to call a halt. I understand that my Austrian colleague will deal in much greater detail with the situation which has evolved there and the legislation that has been adopted, which answers some of the issues that I have raised today. Thank you, Mr Chairman.

The Chairman – Thank you Mr O'Keefe. Are there any questions after these three introductory remarks ? Mr Staes.

Mr Staes – Thank you, Mr Chairman, and thank you to our guests as well for being so kind as to come here to try to give us an idea of what is going on now.

We are dealing with the rights of private property but we are also dealing with the objects of an international cultural community. Secondly, the objects travel all over the world. There are questions raised in so many different, individual countries. It may be just an opinion, but the only way out today is I believe to find standards that are global and that can be applied by global communities. The European community is one of them. Maybe that is the only way for us to find a way out, rather than just consider the legislation of individual countries whereas the problem, in principle, is the same in many places. The element to bring into the debate has to, first of all, focus on as large international standards and ways of attacking this problem as possible.

The Chairman – Thank you very much. Mr Hadjidemetriou.

Mr Hadjidemetriou – Thank you, Mr Chairman. I can say that I am really moved by what I have heard up until now. I consider it as one of the most important meetings of our committee, especially dealing with the Jewish cultural heritage. I am very happy that it took these dimensions, the discussion and research on this issue. It is creating a precedent for world culture, local culture and ethnic cultures. I am really impressed by what I have heard about the importance of the cultural items in the life of a nation, the world, and the human dimension; what Mr Baker said about buildings can be restored by people. Yes, there is a connection between buildings, culture and people. You can never separate people from the culture and their creations. In addition, Jewish life was destroyed and has to be re-established. This is something very important. It is compatible with human rights and the existence of people.

Concerning the third point, the legal point of view, there is insufficiency in facing the problems from a legal point of view because there is a complicity – we have to accept that – of the different countries and different governments with the traffic of illegal items. There is a coverage of this unacceptable situation. If we really want to establish international values and global values we have to face this problem and work as a committee to promote this dimension. Thank you.

The Chairman – Thank you. Mrs Lucyga.

Mrs Lucyga – I think that I do not need to underline that this is a particularly painful theme for us Germans from the post-war generation. We try very hard to achieve justice as far as we can. "Making good again" will not be fully possible, as Mr Baker said, but law can be imposed and a certain consciousness of injustice can be sharpened. This is very important.

And now, I would like to come to what the rapporteur said at the beginning, namely that under the communist régimes in Eastern Europe a further dispersal of Jewish property that had already been stolen took place. I am myself of East-German origin and have seen there how, after re-unification, complex legislation had to be created in order at least to remedy expropriation irregularities. As you know, in Communist East Germany, further expropriation took place regarding land as well as art objects. It was always clear to us that when reforming legislation, Jewish goods had to be a priority both with regard to their return and compensation.

I would now like to ask what you have achieved concerning documentation and research and to what extent you have reached agreements with the Ministries of Culture of the East-German Länder concerning a common documentation and joint further action. I think this is an area where we can well make up for lost time.

The Chairman – The last questions are very short. Mr Baciú.

Mr Baciú.– Thank you, Mr Chairman. I shall be brief. I have been listening very attentively to the questions raised in relation to the restitution of cultural property which was stolen by the nazis or went missing in dubious circumstances. I do not wish to go into detail, but I would like to say that Romania agrees with all 11 of the Washington Conference Principles on Nazi-Confiscated Works of Art.

Moreover, eight Romanian representatives attended the Washington Conference and approved the principles in question, which are reasonable, compliant with international law and non-binding. I know that it is easier to formulate principles than to put them into practice. However, I am certain that the adoption of these principles by a large number of states – 44, if I am not mistaken – will be a significant mark of genuine resolve, especially in former communist countries. Thank you.

The Chairman.– Thank you, Mr Baciú. Would our guest like to respond to these statements and the question of Mrs Lucyga?

Mr Bindenagel – I would like to make a couple of statements, if I may.

First, with regard to Mr O’Keefe and the legal issues, the effort that we made at the Washington Conference was in recognition of the differing legal traditions both in the United States and in Europe, and with the recognition that the efforts made, for instance, in the Unidroit Convention were beyond what we could achieve in the lifetimes of those who had survived the Nazi period. So we have deliberately chosen to seek efforts that did not impinge or affect the legal issue, but rather to try to deal with the individuals and to develop principles which would help guide the conversation as we have here today. If the countries involved adopt these principles or take action, then it becomes very powerful in itself.

With regard to the question proposed by the German delegate on the issue of research, on the issue of opening archives, on the issue of understanding what was actually confiscated as well as what was returned, it is very important that at the Washington Conference the Russian delegation offered to co-operate in dealing with research into the archives, which would help determine what had been stolen. It is fundamental in dealing with Nazi-confiscated art to know what the facts are. In that regard what the French Government has done by placing the MNR Collection on the Internet, what archivists have done around the world to develop finding aids, to research in their archives as the German and United States Governments have done, are crucial to understanding the magnitude of what happened and to

provide the basis not only for restitution but for the longer-term goal. This is to understand what happened in that period, to remember what happened and to deal with ways to protect the cultural heritage of Europe in a way that serves all of our interests.

We certainly agree with the comments that Mr Baker made about the importance of the Jewish community and its suffering in World War II. It is also important for us in today's context to promote the idea of cultural diversity, the richness of European culture, American culture and the respect for that. That is, indeed, what we are trying to achieve, with underlying justice for the survivors of the Holocaust.

Mr Baker – I should like to respond to Mrs Lucyga's question. Unfortunately, in all too many situations the process has been a kind of adversarial one. In other words, you have certain international Jewish bodies involved in identifying properties, local Jewish communities with their own knowledge and their own interests, governments, often because properties have been transferred to regional and municipal authorities – not even national governments limited to this, but state and local officials as well. As many of these properties were privatised it precluded the possibility of restituting them. So when we have successes they are almost in spite of, not because of, this kind of process. I feel it is changing in certain places.

Tomorrow I leave here. In the Czech Republic there is a mixed government commission that has local and international Jewish representation as well as ministerial representation from most departments, including their cultural ministry. Perhaps it will suggest a new approach. The kind of atmosphere that may be this committee can engender could be helpful to moving this along, rather than seeing it as a matter of simply how one fights over property, but its ultimate use in value for reviving community, for the heritage in these societies, for re-establishing connections to international communities, not least of them Jewish communities, in North America and Israel too.

The Chairman – Mr O'Keefe, very briefly please.

Mr O'Keefe – I see the holocaust principles as very much part of an educational process – a very essential educational process. What I would ask is that you see law and the change in law also as part of an educational process.

The Chairman – Thank you very much Mr O'Keefe. I think Mr Zingeris will have all this in his report. I now call Ambassador **Winkler**, who knows the Council of Europe well, since he was the Austrian Permanent Representative to our organisation for several years, from 1992 to 1996.

Mr Winkler – Thank you very much Mr Chairman. Indeed this is sort of a homecoming for me. I am particularly happy to be here today. Thank you very much for the invitation.

What I am trying to do, very briefly, is to tell you of a model which we believe our Austrian law adopted in December of last year could be. Of course every country has a different situation, a different history and a different legal system so I am not suggesting that one law could serve as a model for everything. But this Austrian law attempts to address some of the questions that Mr O'Keefe has mentioned. We have solved them in a way which could may be serve as an example for others.

Very briefly, the history behind the law. Of course one could always ask the question: "Why now, why so late?". It is an almost philosophical question. We also tried to answer

this at the Washington Conference. It is a fact that the 90s, the last decade of this millennium, has become the decade where we are trying to solve some of the unresolved questions.

The catalyst for the Austrian law was the confiscation of two famous paintings by Schiller when they were on exhibition in New York at the Museum of Modern Art, where two individual claims were made and the court ordered the two paintings confiscated. This involves, apart from a number of questions on international exchange of art, legal questions. It showed to us that the legal system in the United States is very different from the European system. Mr O'Keefe has mentioned some of the problems with the Statute of Limitations. It seems that in the United States there can be no Statute of Limitations if property is stolen. In any event, this started off a rather extensive public debate. The media got hold of the issue. It turned out that although we believed that the number of laws that have been adopted since 1945 had solved all the issues, this was definitely not the case. As a matter of fact, we had adopted after 1945 seven restitution laws plus two laws specifically concerning the restitution of works of art. We believed --and I was involved myself as a legal advisor at the time -- that all the questions had been dealt with once and for all. The case of the two Schiller paintings and the ensuing public debate showed that this was by far not the case. The Austrian Minister of Culture and the arts created a commission of experts and asked them to look into all the provenances of works of art in federal museums and in state collections.

As I am a bureaucrat myself I can allow myself to comment on the breathtaking speed with which this commission came up with a final report. It turned out that a very substantial number of works of art were indeed of doubtful origin. It is important to note at this stage that the approach chosen by Austria was a particular and unique one insofar as the state acted on its own initiative and did not wait for claims to be made and then look to see if there was anything in the collections, but rather, the instruction was to all museum directors to look into everything they had and see if it was of doubtful origin. It turned out that there were three categories of what we called doubtful purchases or doubtful origin. These were then transposed into the three categories of the law. The first had to do with export control, which has already been mentioned by Mr O'Keefe. When art was given back in the 1940s and 1950s, the expert control law for works of art applied. What the state then did -- I say this very openly -- was blackmail the owners in saying: "Alright, we give you permission to export your works of art, but this is the list of works we want for ourselves". Of course it was not the meanest works of art that were held back.

It is my legal opinion that export controls are inapplicable in such circumstances because these people -- the rightful owners or their heirs -- were not abroad because they had chosen to go abroad and wanted to export which, under normal circumstances might happen, but they were expelled. They had to flee. They were thrown out of the country. They were lucky to be alive. So I believe the law at the time should not have been applied in the first place. But this happened in the 40s and 50s when circumstances were quite different.

So this was one very large group of works of art that came to Austrian museums and which it was decided should be given back in its entirety. The biggest collection that is involved in this connection was given back a few weeks ago: the Rothschild collection and some very valuable works of art that were in the Vienna Museum of Fine Arts. They were given back and I understand will be auctioned off in the next couple of weeks, one famous Franz Hals among many others.

The second category of works of art concerned works of art that had come either during or after the war into the hands of museums and federal state-owned collections, but which had changed owners in the period from 1938 to 1945. We considered, that all

individual contracts, acts of selling, etc, were null and void because they were not made under normal circumstances. In many instances it was shown that the museums concerned did not know of the origin of those works of art. But nevertheless the law says that those works of art that changed owners during the war must be given back.

The third category is works of art where no owners were found, - Mr Baker has already mentioned this – the heirless property where, after many attempts to locate the owner, no owner was found. These works of art will be auctioned off and the proceeds will be used in connection with Holocaust victims.

So this is basically the legal model. The law says all works of art falling into one of these three categories must be given back. There is no negotiation, no wheeling and dealing. It must be given back. It will not take too long. The next famous collections are already under way. Some famous drawings have for example come into Austrian collections under circumstances which are not quite clear. So all this will be given back.

Let me very briefly mention a couple of aspects. One that is very important is that individual claims will be noted by the commission and looked into. It is not only what the state museums find themselves that will be given back. If someone says that their father had something and they believe it is in a museum in a collection, it will also be looked into.

When I say “only federal museums and state-owned collections”, ninety per cent of all the works of art that we know of that were of doubtful origin are in federal museums or federal collections. Nevertheless parliament has passed a resolution asking all local and provincial museums and collections also to look into their collections and to follow suit. It has already been done, for example, in Vienna and in most other provinces all the museums have done the same.

I believe that within a few years we will be able to say that everything that is owned by the state, either by the federation, by provinces or by communities, that has come to the Austrian state under doubtful, immoral circumstances, will be given back. Thank you.

The Chair.– I now call Ms Teitelbaum for an outline of the situation in Belgium.

Ms Teitelbaum.– Thank you for inviting me to take part in this working session. I shall endeavour to contribute to it as fully as I can.

My work and research on despoliation focuses above all on Belgium, but is of course concerned with the general issues relating to looting and restitution and. I would like to begin by welcoming this European initiative which, in my opinion, is of huge significance today.

As you are aware, the confiscation of Jewish property in Belgium, as everywhere else in Europe, was part of an insidious process of destruction, carried out initially, for the most part, at administrative level. It would not have been possible without the widespread collaboration of the authorities and certain citizens of countries with a democratic tradition.

The despoliation of Jews in Belgium, as in other occupied countries, was a prelude to their destruction, which was already planned out in straightforward, clearly defined stages. This phase was important because it allowed the Germans to identify their intended target very precisely and then to strike at will. The aim of the Nazis’ destruction apparatus was to rob its intended victims before destroying them. In Belgium, however, the aim was to rob

them while ensuring that such activities did not appear barbaric to ordinary people and did not alter the economic infrastructure of a country which was still supposed to be supporting the German war effort.

As elsewhere in Europe, the Jews did not initially feel truly threatened, even though discriminatory measures against them were already in place. They did not imagine that they would fall victim to a society which they knew well and into which they believed themselves to be integrated. It was only gradually, then, that their rights were diminished and they became impoverished. They lost their jobs first of all, then their salaries, their firms, their savings, their housing and, at the end of this long path, christened the “expropriation process” by the historian Hillberg, they lost their underwear, their gold teeth, their hair. In the end, they also lost their lives.

In the economic field in Belgium, this process was perhaps more insidious and complex than elsewhere, so much so that nowadays people still have trouble comprehending it. The German military administration did not have the necessary forces to set it in motion. Collaboration with the local authorities was therefore essential. This involved setting up new structures. The German military command and its administrative staff governed the territory, appointing Belgian commissioners and secretaries general to head ministries and giving them the task of transmitting German orders to the Belgian authorities.

In any event, the German military command in Belgium ensured that its actions against the Jews never ran counter to public opinion. The way in which such measures were presented to the public systematically took this factor into account.

With regard to deportation, the Germans also enjoyed the complicity of the Belgian authorities; otherwise, how could some twenty German officers have managed to capture 17 000 people in a very short space of time in 1942? Collaboration was even established with the Jews, and played a part in the carrying-out of German anti-Jewish administrative orders. Anti-Semitic legislation was first introduced in October 1940 and culminated in September 1942, by which time the first deportations had already begun. All the procedures implemented to eliminate Jews from the economic sphere were set down in laws, instructions and vast quantities of written documents which are still gathering dust in Belgian archives. These thousands of papers contain the memory of a lost community and its disturbing records.

The Nazis robbed the rich and poor alike, as you know. The upper middle classes left the country before the Nazi occupation and were often able to recover part of their confiscated property. Craft and manual workers, however, lost everything amid the turmoil. Although the means of action varied from one country to the next, and although the Nazi occupation took on a variety of political forms, its general traits were the same everywhere: “organised confiscation of property followed by programmed killing”.

Today, however, many countries are making an effort to recover some of the property that was looted from the Jews. I say “some of the property” because in any event, as we all know, it will never be possible to identify, trace and return all such property. We should follow this approach in our work here today, viewing the Holocaust as unique, in terms of cultural property as in all other areas.

What was the scale of the looting of cultural property organised in Belgium by the *Einsatzstab Reichsleiter Rosenberg* and the SIPO-SD (*Sicherheitsdienst*)? In late 1940, the supreme command of the German armed forces (the OKH) made Aryanisation compulsory. From summer 1940 onwards, the Nazis proceeded to confiscate the archives of Jewish and

socialist organisations and masonic lodges. On 7 April 1942, Alfred Rosenberg was appointed head of the “Central Service for Seizing and Safeguarding Cultural Property in Eastern Occupied Regions”. By March 1942, however, the entire task of carrying out the *Möbelaktion* (“Operation Furniture”) was reassigned to the *Reichsministerium* by the *Einsatzstab Rosenberg*: all the collections of books, writings, documents and correspondence, along with artefacts, such as valuable paintings and sculptures, antique furniture, metal, wooden, glass and porcelain functional items and decorative jewellery, and precious items obtained by “Operation Furniture” were given away and handed over to the *Einsatzstab Rosenberg*.

Some Belgian collectors and art dealers took advantage of the occupation to sell works of art to German officials working for Goering or on behalf of Hitler’s planned new museum in his home town Linz. After the war, the Belgian authorities set up the Office for the Recovery of Economic Goods (*Office de récupération économique* - ORE) in order to repatriate all the Belgian property that had been looted, in particular industrial equipment. A small section of the ORE was concerned with cultural property. By 1952, Belgium had recovered 2 749 books and 492 works of art, including the *Mystic Lamb* and Michelangelo’s *Madonna*, stolen from the Notre-Dame church in Bruges. The ORE was dissolved in 1964.

Although the extent of looting in the cultural field was much less significant than in France or the Netherlands, several thousand works of art stolen from Belgium have not been recovered to this day.

Certain paintings were not insured or catalogued and are thus hard to identify. However, it would seem that the missing works are mostly by Belgian artists, with one by Picasso (a 1920 engraving). There are also a number of eighteenth-century English paintings, some of which disappeared in mysterious circumstances, a Rubens portrait and many other works besides. The Germans were only interested in modern art for its exchange value. About 150 works sold during the Nazi war were given to Belgian museums after the war. In the 1950s, the state auctioned off a large number of works of art.

The Ministry of Economic Affairs has published two volumes and is to publish a further three of the inventory of works looted in Belgium, so as to establish a record of all losses, particularly from private collections. Work on this has been fairly slow, as the section responsible within the ministry currently contains one person working on their own, as did their predecessor. Naturally, memory and research are required in order to find out the historical truth. This involves keeping accounts, putting a figure on cold, programmed death, on murdered memory.

That is why democracies today are working on this issue and setting up committees. That is why many countries, when they are confronted with this painful memory, are anxious to understand and assess the scale of the thefts that were perpetrated. For that is what we are talking about: confiscation, despoliation – in other words thefts, which led to the Jews being put to death rather than the reverse. The appointment of committees is not enough; neither is the desire to search. It must be accompanied by a desire to find, as the moral dimension of this question requires answers today.

We would like to see specialists and experts in the various fields meeting more often, and representatives of the different committees meeting more often and working more quickly, because the survivors are dwindling in number. And we would like them to be able hear the results of our work; we certainly owe them that. We owe it to ourselves. Thank you.

The Chair.– Thank you very much. And now, Mrs Cachin.

Mrs Cachin.– Thank you for giving me the opportunity to speak and for organising this meeting, which I consider extremely important, like the Washington Conference, as it allows us to compare our experiences and, I hope, to exchange information.

One of my wishes is that, as a result of this conference, we might be able to exchange more information at European level. I shall briefly outline the situation in France. I also gave a presentation at Washington, which you can find in English in the document on the Washington Conference. This will give you more details than I am going to today.

I would like to remind you that from 1940 onwards – in other words, after the anti-Jewish activities perpetrated by the Germans in Germany and Austria, which obviously preceded those in all the other countries – as with Belgium, it was France's turn. The situation in Paris and the rest of France was especially painful as Paris was, at the time, the main centre for the art market and collectors. France had the largest number of Jewish dealers and collectors. It was certainly the most extensively looted country. To a certain extent, fortunately, looting was carried out systematically, with stolen items being stored at particular locations. Again fortunately, the museum authorities of the time were shocked by all this and were able to identify (with the help of curators working on site) the works stored initially at the Galerie du Jeu de Paume, which were then transported to Germany.

As early as 1943, a law was introduced (and confirmed in 1945) to declare void any German acquisitions made during the war in the occupied countries. In 1945, thanks to the Allies, we were able to recover nearly 60 000 items: books, furniture, works of art, and so on. A vast amount of work was then carried out by a restitution committee. 45 000 artefacts and works of art were returned to Jewish dealers and collectors during this period. A number of unidentified, unclaimed and, so it seemed at the time (although views might be different nowadays), unimportant items were auctioned at the Domaines. The 2 058 remaining unclaimed, unidentified items were placed in national museums.

Since that time (1949), none of the successive museum directors (myself included) has been willing to comply with French legislation, under which, after a period of thirty years, items become the property of institutions or private individuals. The *Conseil d'Etat* has on several occasions asked us to register these unclaimed works in our standard inventories (RF – *République Française* (French Republic) + number, the form used in the inventory for the national museums). Naturally, we have not done so; instead, we have continued to keep these items under the heading MNR (*musées nationaux récupération* – national museums, recovered items), in the knowledge that subsequent research might prove that they were stolen. This has been an extremely good policy, because, since 1950, we have managed to return about thirty items. I am unable to give official confirmation, but by the end of the month, we will have returned another extremely important item, as a result of research. It may seem surprising that this has taken 50 years, but we have had no means of accessing German or private archives (not even those of the collector to whose family the work is to be returned).

Such activities were therefore fairly spectacular at the end of the war, because out of the original 45 000 items, and the 2 000 remaining items, there are now approximately 1 000 paintings into which we have been carrying out extremely precise, detailed research since 1996. We publish details of all our so-called MNR works on the Internet and, at the end of the year, we are going to publish a paper version listing all such paintings along with the

current state of research and investigations, which have obviously made considerable progress.

Naturally, whenever we come across a work of doubtful origins, we will say so. Whenever we prove or deduce that the work was plundered by the Nazis and not returned, we will return it. This applies also to works bought on the market, since the vast majority of so-called MNR works fall into this category. These works were lawfully purchased by the Germans for the museum in Linz (which we were talking about earlier) or for other collections, sometimes, under normal conditions, from non-Jews and dealers, who were only too pleased, unfortunately, to sell at a time when the art market was manifestly dominated by the Germans. Our work is therefore making substantial progress, thanks to the resources we have been granted by the Matéoli Commission. The government has also asked this commission to look into matters relating to all kinds of property stolen from Jewish people during the war, whether artefacts or otherwise, although our business here is to talk about artefacts.

In conclusion, I would like to add that these 60 000 items which have returned to France obviously do not represent the majority of what was looted in France, and a good deal of others have simply gone missing. Many Jewish families today do not know how to go about retrieving stolen works belonging to them. It is of course extremely important for us to be able to help them and to have as much information as possible. One of the most fascinating aspects of the Washington Conference was the initiative suggested by our Russian counterparts to find out what items the Russians stole from the Germans in 1947; at the time, these items were regarded as the spoils of war. Regardless of what becomes of all these items, I believe that it is indispensable for all of us here and for our American friends to have at the very least a list of these items and, if possible, photographs of them. Irrespective of what use is made of these, we would in any case have a store of fascinating information which could be extremely helpful to us in future. Thank you.

Mr Petrakov - Mr Chairman and members of the Committee, it is very important that the ideas of the Washington Conference and the principles of this conference are not only reflected in the mass media but also considered at the highest level, which is how we regard the Committee on Culture and Education of the Council of Europe. And that is all the truer of this sitting taking place in Europe, where the Holocaust took place in the 1930s and 40s. Humankind must not be allowed to forget. The younger generation must know the truth and remember, and that is all the more important in a Europe where, still today, bombs are exploding, rockets are coming down, people are dying and, accordingly, cultural assets too are perishing.

So that the legal basis of our work is clearly understood, I would like to point out that the system of state authorities governing questions of the protection and transfer of cultural assets was set up in the Russian Federation precisely to fulfil the Federation's international undertakings including the Council of Europe instructions on the export of cultural assets of 9 December 1992. The legal basis of our direct work within the Ministry of Culture and the system as a whole lies above all in our State's Constitution, as well as in a series of special laws, the main ones being the law on exporting and importing cultural assets adapted to our own situation and the basic legislation on the archives of the Russian Federation and the State Archives and other archives and on cultural assets transferred to the USSR as a result of the Second World War and located on the territory of the Russian Federation.

The law on transferred cultural assets has already entered into force, as you know. Indeed, in just a few days it will have been in force for a whole year. Entering into force

accordingly was the 18-month period defined by the law for lodging claims and it is easy enough to work out that this will expire in October 1999. Once official claims are lodged, investigation, identification and academic research may be undertaken for however long or short a time necessary, even if the aforementioned period has expired.

At the same time, we do not exclude the possibility of individual, special decisions regarding a given situation or course of events, a fact confirmed, incidentally, at the Washington Conference by Mr Gubenko, the chairman of the corresponding committee of our legislative organ, the State Duma. I would like to point out that the results of the Washington Conference are receiving the due attention of all our country's cultural institutions. As you know, up to the beginning of the 1990s, the theme of transferred assets was closed to researchers and we have already acquired a certain experience in this field although, as other speakers have already mentioned, we have only three specialists operating in this area, who have other tasks to fulfil within the framework of our country's bilateral relations, including with CIS States. In particular, we have been researching and continue to research the Königs collection and are examining questions linked to the Sarospatak library in Hungary, all in accordance with our law, which assumes that such assets may not become Russian property insofar as they have been taken from religious organisations or private individuals persecuted on racial, religious or other grounds.

One week ago, we met representatives of the family of Count Eszterhazy of Austria and seriously examined their claims for the return of their library discovered in our country. Judging by previous experience we are likely to run into various problems in addition to the material difficulties, including the fact that part of the documents and items may be located within Russian civil service departments lying outside the Ministry of Culture system. And once again I would like to remind you of a point made repeatedly at the Washington Conference, namely that searches for art works must be undertaken not only in Russia but in other countries as well.

We take the approach that if property is thought to have been illegally exported and falls within the scope of Article 8 of the Law, and once we have received the corresponding claim in the name of the State concerned, we are obliged, and I stress this, to study the supporting documentation. Such a claim may take the form of a standard note from the Ministry of Foreign Affairs or even the State's accredited embassy in the Russian Federation. It must include a brief summary of the claim, details of any known or supposed circumstances surrounding the removal of the asset and copies of any surviving documents although there may not be that many proving the right of ownership or succession. And the note must duly conclude with a statement to the effect that the government recognises the right of ownership of a given entity and requests the return of the asset on the basis of international law.

I would also remind you that under our law on restitution the question may be raised as to compensation for the preservation, restoration and academic research of such items - this also has to be borne in mind.

The situation may arise quite frequently and there is simply no means of devising any fixed solution. For that reason we find it necessary to prepare apparently separate governmental decisions on this or that question, while in certain cases decisions of the Ministry of Culture will be sufficient.

In turn, I would like to inform the Council of Europe Committee that we have set about publishing a multi-volume catalogue listing the cultural assets which were stolen or disappeared in Russia in war-time. This is the first publication of its kind for Russia, and it is

a single reference work, providing systematised and academically researched information on Russia's cultural heritage losses. Obviously, it is a multi-country catalogue and will run to over 50 volumes; it should have been published at least 50 years ago, following the example of many other countries, but while the department which I represent is scarcely more than two years old, not only have we already got the undertaking up and running but we can announce the publication of three volumes of the catalogue, one of which we had the honour of presenting at the Washington Conference. I mention this since, given that the problems of returning transferred assets are subject to public opinion and different views exist, including, as you know, extreme views that nothing should be handed over to anyone, it would be important, prior to publishing our own list of what is obviously to be given back to others, to publish documents about our own losses. This is most important and the proper thing to do as regards our own public opinion and society.

More specifically, we have already carried out preparatory work in connection with the State Archives in order to gauge roughly the scale of the task at hand. It is quite awe-inspiring. At this stage we are already talking, as a rough estimate, of several tens of thousands of archived files. As you will understand, an archived file may consist of hundreds or even thousands of pages. Most of the documents are in German. It must be borne in mind too that this is not just one depository but a whole series of separate archive organisations. Therefore, it is very important at this point in time to create, possibly with international assistance, several working groups comprising professional academics and specialists with language skills, since there are already fixed time requirements for examining archived documents. This academic research will require a great deal of time and, in addition, technical support, computers, expendables and for that matter people, who will have to be paid. It should be borne in mind that certain work is already being undertaken by representatives of Jewish organisations too, including the Holocaust museum in Washington, on the basis of a framework agreement with the Russian State Archives. They co-operate fairly actively with us, copying and working on a great many documents on Jewish themes. For their part, cultural institutions are also carrying out certain preparatory work for direct research into cultural assets located in our state depositories. Of course, we have a rough idea of the volume of the work and we know the addresses where these items are mostly located, but once again the lack of real means is holding work back. The intermediate aim of such work is to incorporate everything we possess in our federal register of cultural assets created within the framework of the Ministry of Culture, and one of the pages of the corresponding web-site will feature, on the one hand, assets in storage and, on the other hand, assets declared as discovered by the victims of Nazism and the Holocaust.

We have already sent out a special document to all our museums, asking not only our, let us say five, main depositories - the Hermitage, the Pushkin Museum of Fine Arts, the Russian Museum, the Historic Museum and the Goroblya Centre - but also the other museums to look through their collections for such items.

We would also expect similar work to be undertaken in other countries, and at today's high-level gathering we can see that this is the case. In any event we hope that this will be a two-way process. We are ready to receive genuine claims, providing a specific context to enhance our general progress, so that we can quickly create the necessary precedents and test out the machinery provided for in our legislation. I know that some people believe that if claims are made public the present-day owners will keep the items in question even more out of view. Others take the view that, if we publish such lists, as regards the items kept in our country, it must be borne in mind that there will undoubtedly be some sly individuals, sly middle-men who will set about devising some kind of scheme to gain personal profit out of

this situation with no concern whatsoever for the real essence of the restitution process, the ideology behind it and its educational significance.

At present, it is our hope and my own belief that today's conference will make a further contribution to reinforcing efforts in this sphere. We will be discussing specific initiatives in a week's time in Moscow with Mr Bindenagel when he visits our country. And having heard the speakers here today, I would like to urge all the participants in this grand project to move on from emotional, global approaches to this issue so that we can move ever more actively towards specific action.

Once again I would like to thank the Council of Europe Committee on Culture and Education for kindly enabling me to express myself on an issue which is of significance for the whole of mankind. Thank you.

The Chairman - Thank you very much. Mrs Webber, please.

Mrs Webber – Thank you, Mr Chairman. Although I am from the United Kingdom I am speaking here in a European role. ECLA, the European Commission on Looted Art, of which I am the co-Chair, was set up in the wake of the Washington Conference (which provoked many discussions in Europe on the absence of a European voice in these matters), and clarified the clear need for a specialised unitary body to provide a co-ordinated, focused and representative European response on all these issues. ECLA has been ratified by the European Council of Jewish Communities of which my co-Chair is president and represents 35 countries in Europe on matters of culture, welfare, education and restitution. Our Commission on Looted Art has already set up an extensive consultative network which brings together the widest range of groups, institutions and experts working in this complex field across Europe and America. Our key aim, using the Washington Principles as our starting point, is to provide in consultation with that network through a clear precise body of policy, principles and procedures, a coherent and common framework for action - a road map, if you like - to deal with all these issues in each country of Europe.

As we have heard, until now much of the agenda on this subject has been determined in the United States and there has been no representative organisation in Europe monitoring this issue and helping to move it forward. It is, after all, primarily a European issue. Europe was stripped by the Nazis of one-fifth of its art treasures and one-third of all art in private hands - which means all art in Jewish collections - was stolen. Many of us believe that a European perspective is critical in determining how to resolve these matters. The magnitude of the art looting, for example, reflects the great contribution of Jewish collectors to the European cultures in which they lived, a contribution that Hitler wanted to erase. So in deciding what should happen to art in public and private collections that has and will be identified as looted, but for which we can find no heirs, that memory and the historical and cultural record represents should, we believe, be properly acknowledged with the resulting transfer in ownership of these works to the Jewish communities and through their public display.

But the scale of the looting should not deflect our understanding that these thefts were part and parcel of the process of the Nazi destruction of Jewish life. In all these discussions today we have rarely heard about the individual victims and about the meaning of these looted pictures. They are not like looted antiquities. There is nothing impersonal about these pictures and the role they played in people's lives. When we see Kosovan refugees and what they are leaving behind, we should remember that this Nazi looted art may be all that remains

of lives that were utterly destroyed 60 years ago by the Nazis, the last tangible reminders of a murdered family's taste, character, personality and culture.

The reason we are here today is to think about legislation to right the wrongs that were done to these human beings, not just by the Nazis but subsequently by governments, museums and the art trade, who for the last 55 years have sometimes obstructed the recovery of these missing family treasures. The value of these treasures is first and foremost an emotional one. Their recovery, even at this late date, would restore a last link with a much-cherished though long-vanished world.

It is clear that since Washington some progress has been made. Austria is clearly leading the field in this but in general the pace is slow and the take-up of the Washington Principles is very uneven across Europe. There are major concerns. For the reasons we have heard from Mr Bindenagel, the Washington Principles are not binding. There is no timetable for their implementation. They make no mention of the key concept of restitution and they are not specific on how crucial issues, like claims, are to be dealt with, except to say that the process must be fair and equitable.

The American and British museums have produced guidelines on dealing with looted art in their collections but in the case of America some member museums are already either ignoring them or showing serious reluctance to put them into practice.

The international art market remains outside even the Washington process and to all intents and purposes is legally, globally, completely unregulated. With two exceptions there have been no commitments from the art world about self-regulation. Indeed, the art market has made it very clear that any such commitments would in their view create chaos and blight business. In the meantime, hundreds of looted works continue to appear for sale as they have done for the past 55 years. There is no legal standard on provenance, the record which should provide the facts about the history of each painting. Auction catalogues and dealer information are as incomplete or as complete as they choose them to be and generally there are huge gaps for the period 1933 to 1945. The art trade continues to obstruct the legal process by refusing to make their records available. When dealers and auction houses are approached by claimants or even by museums researching works in their collections in line with the Washington Principles, the dealers and auction houses are refusing to provide provenance information on the interesting grounds of client confidentiality.

Only one auction house - and then only in London and New York - is making any effort to check works brought for sale, but when that auction house has found problematic works they have not retained them as civil law would prescribe nor have they attempted to track down the real owner, even when they have known their name, but have simply returned them to the consigner. And the consigner can just send the picture to another sale room which is not so worried about bad publicity.

As for the victims, the key people in all this, there has been no organisation until now that represents their interests on a European-wide basis. The process of retrieving looted art can be characterised as the only kind of theft where it is the victim who must track down both the painting and the perpetrator and even produce a receipt from the thief. Since the War until now, victims have faced an unequal struggle to recover their looted art even if they could locate it, which has usually defied the best and most thorough attempts to do so. Governments and the art world have not only not helped but have sometimes hindered that search. The onus has been on the claimants to find their works and then prove ownership

rather than on the governments or the art world to locate the rightful owners of works in their possession. That balance clearly needs to change.

It is absolutely the case that at present justice turns on accidents of geography. There is a critical need to provide uniform legal standards both within countries and across Europe as a whole. There must be no advantage in trading looted works in one place rather than another or in having a claim in one country rather than another.

Looted art claims are almost by definition international. One claimant has found pictures in eight different countries, some in private collections, some in government-owned museums, some in state-run galleries, and so on. In each case different laws apply, even in the same country. If a picture is found in what was East Berlin, the law enables a claimant to recover it. If it is found in what was West Berlin, the law prevents a claimant from recovering it. If a picture is found in a federal museum in Austria, the law says that restitution is the appropriate response. If it is found in a municipal museum there is as yet no legal recourse. In London, where the National Gallery is leading the field in the museums world in following up from Washington, and has already published a list of 120 dubious works which comprises 30% of all its post-1933 acquisitions, the Museums Act prevents the deaccessioning of those works. The Czech National 's do not even seem to recognise the category of Nazi-confiscated art and regarding looted works found in their possession, simply say "We purchased them legally in 1942 and that is the end of it".

Claims, as we have heard, are also dramatically affected by the Statute of Limitations. It is, for example, better to find your stolen painting in the United States than it is in Europe. In the United States the law favours the victim whereas here in Europe it favours the good-faith purchaser. In Switzerland, where the Statute of Limitations is only five years and there are many, many looted works, no claimant would stand any chance of recovering their works in court. As we have heard, Austria has recently passed a law waiving the Statute of Limitations as regards stolen art. This sets a real precedent which the rest of Europe could follow.

Justice cannot be allowed to turn on accidents of geography. Clearly the national will will be central to any standardisation of laws across Europe but if the will is there laws can be changed to do this, as the Austrian example dramatically shows.

In the case of looted art we would like to see a common set of principles and practices put into operation. ECLA firmly believes that the way forward is for us all to work together on this issue. Apart from the legal measures I have mentioned, ECLA is in the process of formulating a series of codes of practice and working goals which governments, museums and the art trade can commit to, and which can be applied across Europe.

Let me be specific. Firstly, we want a timetable established for the implementation of the 11 Washington Principles by the 44 countries that agreed them, and especially for the opening up of all relevant archives and records. We would like an international conference in Europe devoted to this issue.

Next, we would like to bring clarity and transparency to the working principles of the art market through a commitment from the market in every country to provide accurate and complete provenances for the years 1933 to 1945, to establish standards of due diligence and to make records available.

The identification of looted works is a fundamental goal. In line with the Washington Principles we are establishing a central registry of information in order to disseminate all such information around the world as it emerges, which must, of course, be based on a commitment from each country to provide that information to us. And we aim to further the identification of such works through the use of the most thorough and up-to-date art searching processes internationally.

The identification of owners or their heirs is also a fundamental principle. The central registry of information is crucial to this, as is information from all agencies holding looted art. We are establishing networks to ensure that in every case all possible steps are taken to track down such heirs. ECLA will provide a set of guidelines on the way works ultimately found to be heirless are to be treated.

And last but not least, a way must be found to resolve claims in a way which avoids litigation and confrontation which we believe is in no one's interest. Even the lawyers are agreed about that. And in conjunction with some of the most prominent legal figures in the art law field internationally, ECLA is taking the key initiative of setting up a mediation unit for Nazi-confiscated art which we intend will provide a paradigm of principles of practice for the resolution of all claims wherever they arise.

Common objectives, common laws, a commitment to co-operation - these are essential we believe; so that at least if this issue cannot quickly be resolved, which it will not given the number of paintings involved, their diverse locations, the effort required to track down owners and the fact that no cut-off date for these claims can be acceptable, at least there will be clear and comprehensive guidelines for dealing with all cases and situations as they arise in the future. Thank you.

The Chairman – Thank you, Madame, for your contribution.

Mr Zingeris –. Mr Chairman, fellow parliamentarians, invited guests, ladies and gentlemen, our motion for a resolution on Jewish cultural heritage was the third Assembly document in this field. It was signed on 3 July 1997 by members for the left, and from the right politically. In this text it is proposed that "the Assembly considers that it is important to trace the process of the plundering of Jewish cultural property, and if possible, return it to where it originally belonged or in the first instance, provide access. This in turn would contribute to the restoration of part of the cultural landscape of Europe." It is this paragraph of our motion which will be developed into a legal recommendation.

I must thank Mrs Webber who has already made the conclusion to our hearing. The main point is that we have now international documents and our recommendation will be based on these documents. They are of course, the principles of the Washington Conference, the International Council of Museum's Recommendations concerning the return of works of art belonging to Jewish owners (adopted by the Executive Committee of the Icom in 1998), the Statement of principles and proposed actions on spoliation of works of art during the Holocaust and World War II (adopted by the National Museum Director's Conference in 1988) and the statement of principles of the Association of Art Museum Directors on the spoliation of art during the Nazi World War II Era.

I think that you will remember that with Mrs Terborg we discussed the issue of Unidroit Convention in our committee. It was about a year ago. So far only two countries in Europe have actually voted in favour and adopted this law in parliament. But in general the Unidroit Convention is based not on the Second World War but is based on the events after

the second world war. In this case we have only one legal instrument which provides the right approach for parliamentarians and parliaments. This is the Austrian law which will be an example for us and for our recommendation. Thank you, Mr Ambassador.

There are very professional teams working on the subject in Europe. First there is Anna Webber's newly established Committee. Of course we have a incredible team working with Mr Bindenagel in the State Department. We have also soon 17 international commissions working in Europe dedicated in general to the restitution of property. But I think that they have the possibility to be more focussed not on the religious or communal or private ownership but on the cultural issue too.. I think that there will be a very good idea to make a meeting between these international commissions against Nazi crimes and to ask them to focus more on stolen cultural heritage.

Mrs Teitelbaum made a most interesting contribution. Mr Baker presented the opinion of the majority of former Jewish Europeans now living in the United States after the Second World War. One of the most important documents for our future work will be Dr O'Keefe's who must remain our main partner in preparation of our legal recommendation. Mrs Cachin has developed her brilliant Washington contribution on unclear provenance and principles concerning art looted by the Nazis. Mr Petrakov has been personally involved into the bilateral conversations between Russia and other European countries such as, Hungary, but also others, about the restitution of looted Jewish art works found in the Russian state collections. We consider him to be our most serious partner in concrete relations with Russia.

Our concern is also about time limits. Of course it is up to our friends and colleagues in the *Duma* and the executive government of Russia, but I think it is very important to prolong the 18-month moratorium. What is 18 months for such a subject as plundered cultural goods.

I think our hearing is very significant for the restitution of the cultural heritage looted during the Second World War, from various European nations. It was not only Jewish valuables, but the treasures of a few thousand years of multicultural Europe. I hope that all our activities will contribute to strengthening civil society in uniting Europe soon in the 21st century. Thank you all for your patience and your time.

List of participants

Parliamentarians, members of the Committee on Culture and Education:

MM.	NOTHOMB	(Chairman)	Belgium
	ZINGERIS	(Vice-Chairman)	Lithuania
	ROSETA	(Vice-Chairman)	Portugal
	de PUIG	(Vice-Chairman)	Spain
	BACIU		Romania
	BILLING		Sweden
	CHILIMAN		Romania
	ELO		Finland
	GNAGA		Italy
	HADJIDEMETRIOU		Cyprus
Mrs	ISOHOOKANA-ASUNMAA		Finland
Mr	JAKIC		Slovenia
Mrs	KELTOSOVA		Slovakia
MM.	KIELY		Ireland
	KOLLWELTER		Luxembourg
	LIBICKI		Poland
Mrs	LUCYGA		Germany
Mrs	NEMCOVA		Czech Republic
MM.	MANCHULENKO		Ukraine
	O'HARA		United Kingdom
	RISARI		Italy
	SHAKLEIN		Russia
	STAES		Belgium
	URBANCZYK		Poland
	VOLCIC		Italy
	WRIGHT		United Kingdom

Speakers:

Mr	J.D. BINDENAGEL, Director of the Washington Conference on Holocaust-Era Assets, US State Department, Washington
Rabbi	Andrew BAKER, Director of European Affairs, American Jewish Committee
Mrs	Françoise CACHIN, Director of the Museums of France
Dr	Patrick O'KEEFE, legal consultant
Mr	Victor V PETRAKOV, Deputy Head of the Department for the Cultural Heritage, Ministry of Culture of the Russian Federation, Moscow
Mrs	Laurence SIGAL, Curator of the Museum on the Art and History of Judaism.
Mrs	Viviane TEITELBAUM, President of the Coordinating Committee of Jewish Organisations in Belgium, and also representing the European Jewish Congress
Mrs	Anne WEBBER, Co-Chair of the European Commission of Looted Art (London) and also for the European Council of Jewish Communities
	Ambassador Hans WINKLER, Director for the Americas, Austrian Ministry of Foreign Affairs, Vienna

Permanent Representations:

Mr	Titus CORLATEAN, Legal Advisor, Deputy-Permanent Representative of Romania
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Observers:

Mrs Violetta BARAUSKIENE, Lithuanian Representation, Unesco, Paris
Ms Tatiana DORGALENKO, Attaché to the Russian Embassy
Mrs Miriam GLICKERMANN, European Jewish Congress
Mr Claude-Gérard MARCUS, Deputy Mayor of Paris and Honorary Member of the Assemblée Nationale
Mr Henri MINCZELES, Writer, Paris
Dr Levas PALMAITIS, Director of the European Institute for Dispersed Ethnic Minorities, Vilnius
Mr Igal PALMOR, Counsellor on Information, Israeli Embassy, Paris
Mr Yves PLASSERAUX, President of the group for minority rights, Board of the European Institute for Dispersed Ethnic Minorities
Mr Alberto SENDEREI, JOINT
Ms Ruth ZILKA, Chair, European Council of Jewish Communities

Secretariat:

- Office of the Clerk:

MM. GRAYSON, Head of Division
ARY, Secretary to the Committee
Mrs THEOPHILOVA-PERMAUL, Co-Secretary
Ms KOSTENKO, Co-Secretary